

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.25739 OF 1998

ORAL ORDER:

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This writ petition is filed seeking a declaration that the order passed by the 2nd respondent-Joint Collector, Medak, dated 29.11.1994 as confirmed by the 1st respondent on Appeal, by order dated 28.2.1998 as arbitrary and illegal.

The petitioner herein was assigned an extent of Ac.2.05 gts. of land situated in Sy.No.731 of Narsapur village and mandal by the Mandal Revenue Officer, Narsapur. Since the date of assignment the petitioner has been continuing in possession and enjoyment of the same. While so, a show cause notice was served on the petitioner calling upon to show cause as to why the assignment should not be cancelled, alleging that the petitioner is having more than Ac.5.00 of patta land and that his annual income is also more than Rs.6,000/- and therefore he is ineligible for grant of assignment. It appears that similar show cause notices were served on several other assignees on the basis of a complaint made by the Member of the Legislative Assembly of Narsapur. The petitioner submitted his explanation denying the allegations. However, the 2nd respondent by order dated 29.11.1994 cancelled the assignment in favor of the petitioner along with 34 similarly situated assignees holding that the petitioner is ineligible for the assignment. Aggrieved by the same, the petitioner preferred an Appeal before the 1st respondent which was dismissed by order dated 28.2.1998 confirming the order of cancellation passed by the 2nd respondent. Hence, this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

The impugned order of cancellation is a common order under which the assignment in favour of 35 assignees was cancelled in

exercise of the powers vested under Section 166-B of A.P. Telangana Area Land Revenue Act, 1317-F. As noted above, so far as the writ petitioner is concerned, the assignment was cancelled on the ground that he is having more than Ac.5.00 of patta land and that his annual income exceeds Rs.6,000/-. The petitioner in his explanation denied the said allegation and stated that except the Ac.2.05 gts of land assigned to him, he does not own any other land and that his annual income also does not exceed Rs.6,000/-. However, the said explanation was not accepted by the respondents. Though there was no other material to show that the petitioner owns more than 2.05 gts of land, the land to an extent of Ac.2.22 gts held by the mother of the petitioner was also computed in the holding of the petitioner since the petitioner is living jointly with his mother and, accordingly, it was concluded that the total holding of the family is Ac.5.35 gts.

The word “landless poor” has been defined under Section 2(3) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, ‘Act 9 of 1977’) as under:

“(3) “Landless poor person” means a person who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land or such other extent of land as has been or may be specified by the Government in this behalf, from time to time and who has no other means of livelihood;

.....”

On a plain reading of the above definition, it is clear that the reference is only to the land held by an individual. Since the said definition does not include the holding of the family, as rightly contended by the learned counsel for the petitioner, the respondents committed an error in clubbing the land held by the mother of the petitioner while computing the extent of the land held by the petitioner. Even with regard to the allegation that the annual income of the petitioner exceeds Rs.6,000/-, no material was placed before the 2nd respondent contradicting the plea of the petitioner that his income was less than Rs.6,000/-. It is also relevant to note that both the primary

authority as well as the appellate authority failed to appreciate the facts and circumstances of each case, but passed a common order without application of mind to the explanation offered by the petitioner.

For the aforesaid reasons, the impugned orders passed by the respondents 1 and 2 are erroneous and liable to be set aside, so far as the petitioner herein is concerned.

Accordingly, the Writ Petition is allowed and the order of the 2nd respondent dated 25.11.1994, as confirmed by the 1st respondent by order dated 28.2.1998, so far as the petitioner herein is concerned, is hereby set aside.

(G. ROHINI, J).

10th April, 2007.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.25739 OF 1998

10th April, 2007.

Between:

Machnuri Krishna.

.. Petitioner.

And

The Special Commissioner of Land Revenue,
Andhra Pradesh, Hyderabad and others.

.. Respondents.

As could be seen from the material on record, the fact that the petitioner is possessing Ac.1.06 gts. of wet land is not in dispute. If the

said land is taken into consideration, it is not in dispute that the petitioner is eligible for assignment. However, it is alleged that the mother of the petitioner by name Chandramma is holding patta land to an extent of Ac.2.22 gts which is classified as dry. Since the petitioner is living jointly with his mother, if the said land is also taken into consideration, it should be held that the total holding of the family is Ac.5.34 gts and, therefore, the petitioner is ineligible for assignment.

It is to be noted that the explanation 'landless poor person' is defined under Section 2(3) of Act 9 of 1977, as a person who owns an extent of land not more than 2 ½ of wet or Ac.5.00 of dry land. Even as per G.O.Ms.No.1724 dated 26.8.1959 under which the earlier Assignment Policy made under G.O.Ms.No.1406 dated 25.7.1958 was modified, landless poor person was defined as one who owns not more than 2 ½ acres of wet land or Ac.5.00 of dry land. It was also clarified under the said policy that 1 acre of wet land will be treated as Ac.2.00 of dry land. Even assuming that the petitioner has been living jointly along with his mother Chandramma, having regard to the specific definition of landless poor person under the statute, I am unable to agree with the stand taken by the respondents that the total holding of the family shall be taken into consideration. Since, on the face of it, the conclusion arrived at by the respondents 1 and 2 is erroneous, the impugned order passed by the 1st respondent confirming the order of the 2nd respondent so far as the petitioner is concerned is hereby set aside.

The writ petition is accordingly, allowed. No costs.

(G. ROHINI).

10th April, 2007.
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